STATE OF MICHIGAN

COURT OF APPEALS

PHILLIP HEMSTREET, JOHN MURPHY, ART SNYDER, JEFFREY SAWYER, JON JOHNSON, and GEORGE DEVILLE,

Plaintiffs-Appellants,

v

CITY OF GRAND RAPIDS, COUNTY OF KENT, and KENT COUNTY SHERIFF'S DEPARTMENT,

Defendants-Appellees.

UNPUBLISHED
April 10, 1998

No. 202424
Kent Circuit Court
96-007496-CL

Before: Neff, P.J., and Jansen and Markey, JJ.

PER CURIAM.

In this wrongful discharge case, plaintiffs appeal by right the trial court's order denying their motion for partial summary disposition, granting defendant City of Grand Rapids' motion for summary disposition, and granting defendant Kent County's motion for summary disposition. We affirm.

On July 1, 1993, defendant City of Grand Rapids terminated plaintiffs' employment as prisoner security guards for the city police department's jail. Defendant city Police Chief William Hegarty had previously ordered that in April 1993, the police department begin "transfer[ring] the responsibilities of the Jail Unit to the Kent County Correctional Facility (KCCF). . ." such that selected categories of arrestees would be transported directly to KCCF rather than housed temporarily at the city jail. All arrestees would be transported to KCCF for processing and eventual disposition by July 1st. Thus, as of July 1, 1993, KCCF accepted all street arrests that defendant city's police department made. Plaintiffs were terminated because the city jail no longer needed security guards, and they were neither transferred nor appointed to the KCCF, even though defendants Kent County and the Kent County Sheriff's Department admitted that in November 1993, they approved the addition of seven correctional officer positions at KCCF.

Plaintiffs query whether the intergovernmental transfer of functions and responsibilities act (ITFRA) applies when a city decides to discontinue a function in which it has voluntarily engaged when

the county that encompasses the city is statutorily required to maintain that function and currently provides that function to the political subdivisions within its jurisdiction. We believe that the act does not apply under the circumstances presented in this case.

We review de novo the grant of summary disposition pursuant to MCR 2.116(C)(10) and will affirm where, except with regard to the amount of damages, there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994); *Fitch v State Farm Fire and Casualty Co*, 211 Mich App 468, 470-471; 536 NW2d 273 (1995). We must consider the pleadings, affidavits, depositions, admissions, and any other documentary evidence in favor of the nonmoving party and grant the benefit of any reasonable doubt to the opposing party. *Radtke v Everett*, 442 Mich 368, 374; 501 NW2d 155 (1993). The opposing party may not rest upon mere allegations or denials in the pleadings but must, by affidavit or other documentary evidence, set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4). The court may not make factual findings or weigh credibility in deciding a motion for summary disposition. *Featherly v Teledyne Industries, Inc*, 194 Mich App 352, 357; 486 NW2d 361 (1992). Accordingly, this Court examines the facts of this case in a light most favorable to plaintiff. *Radtke, supra; Manning v Hazel Park*, 202 Mich App 685, 689-690; 509 NW2d 874 (1993).

As explained below, although defendant city undertook the maintenance of a jail or lockup before July 1, 1993, it did not "transfer" that function, as envisioned by § 2 of the ITFRA, MCL 124.532; MSA 5.4087(2), because defendant Kent County was statutorily required to perform this same function, and, in fact did so. Subsequently, plaintiffs do not fall within the class of "affected employees" identified in MCL 124.534(d); MSA 5.4087(4)(d).

In reviewing statutes, our primary goal is to ascertain and give effect to the Legislature's intent. *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993); *VanGessel v Lakewood Public Schools*, 220 Mich App 37, 40; 558 NW2d 248 (1996). Where reasonable minds can differ concerning a statute's meaning, only then is judicial construction appropriate. Otherwise, judicial construction is neither necessary nor permitted when the statute's plain and ordinary meaning is clear. *VanGessel, supra*. We must look to the object of the statute, the harm that it was designed to remedy, and apply a reasonable construction in order to accomplish the statute's purpose. *Id.*

MCL 45.16; MSA 5.291 and MCL 45.16a; MSA 5.291(1)[1] mandate that each county provide a jail and maintain a lockup, respectively, while MCL 117.4e; MSA 5.2078(1) *permits* a city to acquire property for maintaining "city prisons and work houses." Section 2 of the ITFRA, MCL 124.532; MSA 5.4087(2), states that "[t]wo political subdivisions [which includes a city and a county[2]] are authorized to enter into a contract with each other providing for the transfer of functions or responsibilities to one another or any combination thereof upon the consent of each political subdivision involved" (emphasis added). Section 3 of the ITFRA, MCL 124.533; MSA 5.4087(3), specifies that the valid contract must be approved by concurrent resolutions of and entered into the minutes of proceedings kept by the political subdivisions' governing bodies, and a copy of the contract must be filed with the secretary of state.

Section 4 of the ITFRA, MCL 124.534; MSA 5.4087(4), sets forth the required contents of the contract, including a description of the functions or responsibilities being transferred and "[t]he manner in which the affected employees, if any, of the participating political subdivisions shall be transferred, reassigned or otherwise treated" upon a transfer of functions or responsibilities. Section 4 further lists additional considerations regarding the transfer of benefits, pensions, vacation and sick leave, worker's compensation, and insurance for affected employees. Specifically, MCL 124.534(d); MSA 5.4087(4)(d) states in part:

> (i) Such employees as are necessary for the operation [of the functions or responsibilities to be transferred] shall be transferred to and appointed as employees subject to all rights and benefits. These employees shall be given seniority credits and sick leave, vacation, insurance and pension credits in accordance with the records or labor agreements from the acquired system. Members and beneficiaries of any pension or retirement system or other benefits established by the acquired system shall continue to have rights, privileges, benefits, obligations and status with respect to such established system. The political subdivision to which the functions or responsibilities have been transferred shall assume the obligations of any system acquired by it with regard to wages, salaries, hours, working conditions, sick leave, health and welfare and pension or retirement provisions for employees. If the employees of an acquired system were not guaranteed sick leave, health and welfare and pension or retirement pay based on seniority, the political subdivision shall not be required to provide these benefits retroactively.

Notably, § 4(f), MCL 124.534(f); MSA 5.4087(4)(f), also specifies that the contract between the transferring political subdivisions must include "[t]he method of financing to be used and the amount to be paid by each of the participating units in relation to the undertaking involved." This requirement strongly suggests that the transferee, i.e., the political subdivision agreeing to take over the transferred responsibility, will receive compensation for accepting the transfer of functions. We note, however, that a preexisting statutory duty is not considered adequate consideration to create a contract. *Alar v Mercy Memorial Hospital*, 208 Mich App 518, 525; 529 NW2d 318 (1995).

In the case at bar, defendant Kent County is required by statute to provide a jail and maintain a lockup. This preexisting statutory duty existed both before and after July 1, 1993. Thus, defendant city's decision to cease its voluntarily performance of lockup functions at the Hall of Justice did not result in defendant Kent County taking on any new function. Defendant county merely continued operating KCCF as previously mandated, albeit with more prisoners. Defendant city had no need to contract with defendant Kent County for the latter to perform jailing functions it was statutorily required to perform. Simply put, whether defendant city maintained a jail or lockup was legally irrelevant to defendant Kent County because the county had a legislatively-required duty to maintain a jail for the benefit of the political subdivisions within the county. MCL 45.16; MSA 5.291. Thus, no "function," i.e., housing arrested individuals, was transferred from defendant city to defendant Kent County

because that function was already being performed at the KCCF and was available for defendant city's use.

We find support for this conclusion in *City of Grand Rapids v Kent County*, 96 Mich App 15; 292 NW2d 475 (1980). In that case, we found that Kent County was legally authorized to charge the city of Grand Rapids and other cities in the county a per diem fee for confining in the county jail persons charged with or convicted of city ordinance violations. *Id.* at 21. Pursuant to MCL 801.4a; MSA 28.1724(1):

> All charges and expenses of safekeeping and maintaining persons in the county jail charged with violations of city, village or township ordinances shall be paid from the county treasury if a district court of the first or second class has jurisdiction of the offense.[3] [*Id.* at 19.]

Most notably, however, this Court recognized that,

> plaintiff cities are not required to use the jail services provided by Kent County. As home rule cities they are *authorized* to provide separate city prisons. MCL 117.4e(1); MSA 5.2078(1). Furthermore, plaintiff cities voluntarily chose to set up their own separate penal systems. MCL 117.4i(10); MSA 5.2082(10). It is clear, therefore, that, though lodged in the county jail, these prisoners are in reality city prisoners. As the Supreme Court has determined [in *People ex rel Mixer v The Bd of Supervisors of Manistee County*, 26 Mich 422 (1873)], the expenses of their lodging must be considered part for the expenses of the city police systems. [*Id.* at 23.]

See also, OAG 1975-1976, No. 4957, p 321 (February 25, 1976) ("where the Attorney General expressed his opinion that the cost of prisoners' care and maintenance of one county held in the jail of another county, MCL 801.107; MSA 28.1757, should be paid by the county which has committed such prisoners, and not by the county where the jail is physically located." *City of Grand Rapids, supra* at 23 n 6.).

Because defendant Kent County already possesses the statutory power to charge defendant city for housing arrestees who are charged solely with violating city ordinances, there is no need for these defendants to contract for the transfer of inmate housing functions and provide for a "method of financing" for the "undertaking involved." MCL 124.534(f); MSA 5.4087(4)(f). Without a transfer of functions as contemplated by the ITFRA, defendants were not required to enter a contract with defendant Kent County before the county could house individuals arrested by defendant city's police department. Likewise, in the absence of a transferred function, plaintiffs do not qualify as "affected employees" and are not entitled to the protections afforded by the ITFRA.

We further find no merit in plaintiffs' contention that merely because defendant City's Chief of Police used the term "transfer" in informally describing what would happen to defendant city's arrestees that the discontinuation of jail services at the Hall of Justice constituted a legal "transfer" of governmental functions as contemplated by the ITFRA from one defendant to another.

Thus, because the ITFRA does not apply to the facts of this case, we need not review plaintiffs' additional question raised on appeal regarding the act.

Accordingly, we affirm the trial court's order denying plaintiffs' partial motion for summary disposition, granting defendant city's motion for summary disposition under MCR 2.116(C)(10) and (I)(2), and granting defendant Kent County's motion for summary disposition.

/s/ Janet T. Neff
/s/ Kathleen Jansen
/s/ Jane E. Markey

[1] MCL 45.16; MSA 5.291 states in pertinent part:

> Each organized county shall, at its own cost and expense, provide at the county seat thereof a suitable courthouse, and a suitable and sufficient jail and fireproof offices and all other necessary public buildings, and keep the same in good repair. . . . [A] jail may be located anywhere in the county. . . .

MCL 45.16a; MSA 5.291(1) also states, in pertinent part:

> In lieu of providing a jail, as required in section 16, each county may contract with other counties for the use of such counties' jails. However, each county shall maintain a lockup which meets the standards established by the department of corrections by rules promulgated in accordance with the provisions of . . . sections 24.71 to 24.80 of the Compiled Laws of 1948, and subject to . . . sections 24.101 to 24.110 of the Compiled Laws of 1948.

[2] See MCL 124.531(b); MSA 5.4087(1)(b).

[3] "In first and second class judicial districts, the county is responsible for the maintenance of the district court and two-thirds of all fines and costs resulting from the prosecution of ordinance violations must be paid to the county." *Id.* at 21.